



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2021-0298; FRL-10023-53-Region 7]**

**Air Plan Approval; Nebraska; Revisions to Title 129 of the  
Nebraska Administrative Code; General Conformity**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) submitted by the State of Nebraska on July 16, 2020. This proposed action will amend the SIP to revise title 129 of the Nebraska Administrative Code by removing a portion of the SIP that addresses general conformity. General Conformity ensures that the actions taken by federal agencies do not interfere with a state's plan to attain and maintain national standards for air quality. Since states are no longer required to include general conformity requirements in SIPs, these proposed revisions remove unnecessary language and do not substantively change any existing statutory or regulatory requirement. The proposed revisions do not impact the stringency of the SIP or air quality nor do they impact the State's ability to attain or maintain the National Ambient Air Quality Standards. The EPA's proposed approval of this rule revision is in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-R07-OAR-2021-0298 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Allie Donohue, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7986; email address: [donohue.allie@epa.gov](mailto:donohue.allie@epa.gov)

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA.

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### **I. Written Comments**

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2021-0298, at <https://www.regulations.gov>. Once submitted,

comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

## **II. What is Being Addressed in this Document?**

The EPA is proposing to amend Nebraska's SIP to include revisions to title 129 of the Nebraska Administrative Code. The EPA is proposing to approve revisions to the Nebraska SIP submitted by the State of Nebraska on July 16, 2020. Specifically, the EPA is proposing to amend the Nebraska SIP by removing a portion of the SIP as follows: Title 129, Chapter 40. General Conformity. EPA is proposing approval of these revisions as they remove unnecessary language and do not substantively change any existing statutory or regulatory requirement.

The EPA approved this rule into the Nebraska SIP in 1972.

In August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) which eliminated the requirement for states to adopt and submit General Conformity SIPs. Section 6011 of SAFETEA-LU revised the conformity requirements in section 176(c) of the CAA. Specifically, section 6011(f) revised section 176(c) (4) (A) of the CAA by deleting the requirement for the states to adopt and submit General Conformity SIPs.

In 2010, EPA revised the General Conformity regulations to make the adoption and submittal of the General Conformity SIP optional for state and eligible federally-recognized tribal governments. See 75 FR 17253 (April 5, 2010). Since there is no longer a requirement for SIPs to include general conformity requirements, EPA finds that the proposed revisions will not impact the stringency of the SIP or air quality.

States are no longer required to have their own general conformity rules. If a state does not have a conformity SIP, then federal agencies will conduct an evaluation under the requirements of 40 CFR 93.150-93.165. The SIP revision being proposed for approval by this action removes unnecessary language from the SIP and does not have an adverse effect on air quality in Nebraska.

### **III. Have the Requirements for Approval of a SIP Revision Been Met?**

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The

submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of this SIP revision from September 28, 2019 to November 6, 2019 and held a public hearing on November 7, 2019. In a letter to the state dated November 7, 2019, the EPA stated that the agency "has no comment on the proposed repeal of this regulation." The SIP revision meets the substantive requirements of the CAA, including section 110 and implementing regulations.

#### **IV. What Action is the EPA Taking?**

The EPA is proposing to amend the Nebraska SIP by approving the state's request to remove Title 129 section 40. General Conformity. The removal of this portion of the SIP will remove unnecessary language and does not substantively change any existing statutory or regulatory requirement. The EPA has determined that these changes will not impact the stringency of the SIP or adversely impact air quality.

The EPA is processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

#### **V. Incorporation by Reference**

In this document, the EPA is proposing to amend regulatory text that includes incorporation by reference. As described in the proposed amendments to 40 CFR part 52 set forth below, the EPA is proposing to remove provisions of the EPA-Approved Nebraska Regulations from the Nebraska State Implementation

Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

## **VI. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control,  
Incorporation by reference, Intergovernmental relations

May 7, 2021.

Edward H. Chu,  
Acting Regional Administrator,  
Region 7.



For the reasons stated in the preamble, the EPA proposes to amend 40 CFR part 52 as set forth below:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart CC-Nebraska**

2. In §52.1420, the table in paragraph (c) is amended by removing the entry "129-40" under the heading "Title 129-Nebraska Air Quality Regulations".